

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

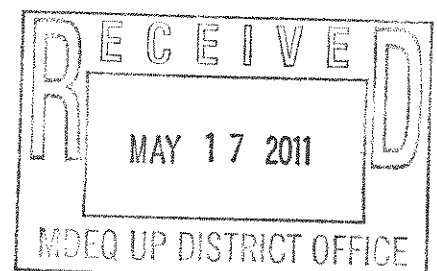
MDEQ Reference No.: CNTS-RD-2011-001

**Kennecott Eagle Minerals Company, Humboldt Mill Property Redevelopment  
4547 County Road 601, Humboldt Township, Marquette County, Michigan**

Proceeding under the general powers and authority of the Department of Attorney General.

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**ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE**



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### Attachments

A MDEQ approved Environmental Response Activities Work Plan

B Property Depiction

## **ADMINISTRATIVE AGREEMENT AND COVENANT NOT TO SUE**

### **I. JURISDICTION**

This Administrative Agreement (Agreement) is entered into voluntarily by and between the State of Michigan, through the Michigan Department of Attorney General (MDAG) and the Michigan Department of Environmental Quality (MDEQ) (collectively referred to as the State), and Kennecott Eagle Minerals Company, Kennecott Eagle Land, LLC, and Rio Tinto America Inc. (collectively referred to as "KEMC") pursuant to the authority vested in the MDEQ and the MDAG by law including Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.* In addition, the State is authorized to regulate the Humboldt Mill operation and Property under Part 632 of NREPA. The Parties agree not to construe this Agreement as supplanting the State's authority under Part 632 (including implementing regulations and the Part 632 mining permit for the Humboldt Mill dated February 9, 2010 (MP 01 2010)) or construe this Agreement to impose any requirements that conflict with Part 632. Upon execution, this Agreement shall apply and be binding upon the State and KEMC and their respective successor entities.

### **II. DENIAL OF LIABILITY**

The execution of this Agreement by KEMC is neither an admission or denial of liability with respect to any issue dealt with in this Agreement nor an admission or denial of any factual allegations or legal determinations stated or implied herein.

### **III. PARTIES BOUND**

3.1 This Agreement shall apply to and be binding upon KEMC and the State and their successors. Any change in ownership, corporate, or legal status of KEMC, including, but not limited to, any transfer of assets, or of real or personal property, shall in no way alter KEMC's responsibilities under this Agreement. To the extent that KEMC is the owner of a part or all of the Facility, KEMC shall provide the MDEQ with written notice prior to its transfer of ownership of part or all of the Facility and shall provide a copy of this Agreement to any subsequent owners or successors prior to the transfer of any ownership rights. Further, this Agreement is only for the benefit of KEMC and the State, and shall not be enforceable by or interpreted to be for the benefit of any third party.

3.2 Notwithstanding the terms of any contract that KEMC may enter with respect to the performance of response activities pursuant to this Agreement, KEMC is responsible for compliance with the terms of this Agreement and shall ensure that its contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Agreement.

3.3 The signatories to this Agreement certify that they are authorized to execute this Agreement and to legally bind the parties they represent.

### **IV. DEFINITIONS**

The terms used in this Agreement shall have the following meanings:

4.1 "Agreement" means this document, any attachments and any reports, Submissions and attachments thereto made pursuant to this document. Upon approval by the MDEQ, all

attachments to this document and any Submissions under this document are incorporated into and made an enforceable part of this document.

4.2 "Day" means a calendar day, unless otherwise noted.

4.3 "MDEQ" means the Michigan Department of Environmental Quality, its predecessor and successor entities, and those persons or entities acting on its behalf.

4.4 "Effective Date" means the latest date of execution of the Signatories specified in Section XXIV (Signatories).

4.5 "Facility" means the Property and any area, place, or Property where a hazardous substance attributable to the Property, in excess of the concentrations which satisfy the cleanup criteria for unrestricted residential use under Part 201, has been released, deposited, disposed of, or otherwise comes to be located by migration.

4.6 "KEMC" means the Kennecott Eagle Minerals Company, Kennecott Eagle Land, LLC, and Rio Tinto America, Inc.

4.7 "Oversight Costs" means reasonable and customary costs incurred by the State in development, oversight, enforcement, and monitoring of this Agreement and documentation of compliance with this Agreement. Oversight Costs may include costs incurred to monitor the response activities described in Attachment A at the Property; observe and comment on covered field activities; review and comment on Submissions; collect and evaluate samples; purchase supplies to perform or monitor response activities relative to the Property; attend and participate in meetings; prepare cost reimbursement documentation; and enforce, monitor and document

compliance with this Agreement. Oversight costs are costs of response activity pursuant to Part 201. Oversight costs also include any costs incurred by the State pursuant to Section XIII (Assignment). Oversight costs do not include costs incurred by the State in development, oversight, enforcement and monitoring of the permits issued under or with respect to Part 632 of the NREPA.

4.8 "Part 31" means Part 31, Water Resources Protection, of the NREPA, 1994 PA 451, as amended MCL 324.3101, *et seq.*, and the administrative rules promulgated thereunder.

4.9 "Part 201" means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*

4.10 "Part 201 Rules" means the administrative rules effective on December 14, 2010, that were promulgated under Part 201 of the NREPA, and any rules promulgated in the future pursuant to Part 201.

4.11 "Part 632" means Part 632, Nonferrous Metallic Mining, of the NREPA, MCL 324.63201 *et seq.* and the administrative rules promulgated thereunder.

4.12 "Parties" means KEMC and the State.

4.13 "Permitted Release" shall have the meaning set forth in MCL 324.20101(1)(ii).

4.14 "Property" means the 349.7 acre parcel described in Section 1.2.1 of the Application for Permit MP 01 2010, issued by the MDEQ to the Kennecott Eagles Mineral Company on February 9, 2010, and as depicted on Exhibit B.

4.15 "RD" means the Remediation Division of the MDEQ, its successor entities, and authorized persons acting on its behalf.

4.16 "State" or "State of Michigan" means the MDAG and the MDEQ, and any representative acting on behalf of any such agency or subdivision.

4.17 "Submissions" means all work plans, documents, schedules, submissions, and reports to be submitted to the MDEQ pursuant to this Agreement.

4.18 Unless otherwise defined herein, all terms used in this Agreement which are defined in Part 3 of the NREPA, MCL 324.301, Part 201, Part 632, the Part 201 Rules, or the Part 632 Rules shall have the same meaning in this Agreement as in Parts 3, 201 and 632 of the NREPA and the Parts 201 and 632 Rules. If there is a conflict between the NREPA and the Part 201 Rules, the NREPA shall prevail.

## **V. STATEMENT OF PURPOSE**

In entering into this Agreement, it is the mutual intent of the Parties to protect the public health, safety, welfare and the environment while facilitating a brownfield redevelopment project at the Property. This Agreement also is intended to: (a) provide for KEMC's implementation of voluntary response activities at the Property; (b) coordinate the implementation of response activities with redevelopment activities at the Property; (c) provide a mechanism for KEMC to purchase or operate on the Property without incurring strict liability for releases of hazardous substances at the Facility that occurred prior to the Effective Date; and (d) provide a mechanism to facilitate KEMC's transfer of ownership of the Property with respect to liability under Section 20126(1)(c) of the NREPA. KEMC agrees to implement certain response activities including

or TDF). Humboldt Properties LLC owns the remainder of the Property which comprises approximately 135.5 acres.

7.2 The Property was used for iron mining, iron ore beneficiation and management of related residuals from approximately 1954 until 1979. The mill facility was constructed to concentrate low grade iron ore from the Humboldt mine. The mine was developed in two stages, initially with underground removal and later as an open pit mine. Overburden rock and lean rock derived from open pit mining activities were placed on the Property.

7.3 The mill facility was purchased by Callahan Mining Company in 1985 and converted to process gold ore from a nearby mine. Tailings derived from beneficiation of the gold ore were managed via placement below water in the former Humboldt open pit mine which had been allowed to fill with water following cessation of iron mining. These operations continued until approximately 1990.

7.4 Minerals Processing Corporation (MPC) acquired the mill facility from Callahan in 1995. The Tailings Disposal Facility was not included in this transaction. MPC conducted additional site investigations in support of development of a baseline environmental assessment (BEA) for the mill facility. A BEA was submitted to the MDEQ in January 1996. MPC used a small portion of the mill building to process industrial minerals through dry grinding operations. Later, MPC used the building for equipment storage.

7.5 KEL, an affiliate of Kennecott Eagle Minerals Company, acquired the mill facility from MPC in September 2008. KEL submitted a category N BEA for disclosure to the MDEQ in March 2009. KEL conducted preliminary site rehabilitation activities, including



removal/disposal of ore processing residuals and accumulated debris from within the mill building, removal/disposal of abandoned/discarded containers, and abatement of asbestos containing materials.

7.6 Investigations conducted to-date document the presence of a variety of mining residuals on portions of the Property, including, but not limited to, iron concentrate, iron tailings, pyrite, and leach residue. In addition, fuel-related constituents have been detected in proximity to former UST areas.

7.7 Releases into the environment of hazardous substances have occurred historically on the Property and these releases have impacted soils, groundwater, or surface water at concentrations which constitute a facility pursuant to Section 20101(1)(r) of the NREPA.

7.8 On February 9, 2010, KEMC was issued Permit MP 01 2010 by the MDEQ under the authority of Part 632, Nonferrous Metallic Mineral Mining, of the NREPA for beneficiation and residuals management activities on the Property. Placement of tailings in the Humboldt Tailings Disposal Facility and related construction activities will be regulated pursuant to the Part 632 permit and Permit No. 08-52-0104-P, a permit issued under the authority of Part 301, Inland Lakes and Streams, and Part 303, Wetlands Protection, of the NREPA. Surface water discharge from beneficiation and related activities on the Property as well as storm water runoff will be conducted in accordance with the requirements of National Pollutant Discharge Elimination System surface water discharge permit, Permit No. MI0058649, issued under the authority of Part 31 of the NREPA. Air discharges from beneficiation activities will be in accordance with an air use permit, Permit to Install No. 405-08, and if required, a Renewable Operating Permit, both issued under the authority of Part 55 of the NREPA.

BASED ON THE FOREGOING FACTS AND DETERMINATIONS, KEMC HEREBY AGREES TO PERFORM THE RESPONSE ACTIVITIES SPECIFIED IN THIS AGREEMENT.

#### **VIII. IMPLEMENTATION OF RESPONSE ACTIVITIES**

8.1 KEMC will conduct the response activities described in the MDEQ-approved work plan (Attachment A). Upon completion of the performance of the response activities in the MDEQ-approved work plan, KEMC shall submit a draft final report as described in Section XXII (Termination).

8.2 Within two years of the Effective Date, KEMC shall undertake and complete the response activities detailed in Attachment A, including: (a) removal and proper disposal of the buried pyrite and associated impacted soils; (b) further management and remediation of hydrocarbon/UST release areas; and (c) excavation and proper disposal of soils in the various former stockpile areas identified south of the mill building.

8.3 Within two years of the Effective Date, KEMC shall properly abandon and plug any monitor wells, which were installed as part of a response activity by prior owners at or related to the Facility and which will not be utilized for long-term monitoring at the Facility, in accordance with the procedures described in the American Society for Testing and Materials (ASTM) Standard Guide for Decommissioning of Ground Water Wells, Vadose Zone Monitoring Devices, Boreholes, and Other Devices for Environmental Activities, ASTM Designation: D5299-92.

## **IX. REIMBURSEMENT OF COSTS**

9.1 KEMC shall reimburse the State its reasonable Oversight Costs under this Agreement for the development, execution, and implementation of this Agreement. The MDEQ will provide KEMC with an annual invoice for such costs lawfully incurred by the State. Any such invoice will set forth with reasonable specificity the nature of the costs incurred.

9.2 Except as provided by Section XVII (Dispute Resolution), within thirty (30) days of receipt of an invoice from the MDEQ, KEMC shall send a certified check made payable to the "State of Michigan - Environmental Response Fund" to the address specified in Paragraph 18.1(B) (Project Coordinators and Communications) of this Order. The certified check shall reference the Humboldt Mill Facility, the MDEQ Reference No. CNTS-RD-2011-001 and the Remediation Division. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator and the Assistant Attorney General in Charge: Environment, Natural Resources, and Agriculture Division, Department of Attorney General, P.O. Box 30755, Lansing, Michigan, 48909. The MDEQ may bill on an annual basis, but reserves the right to extend the billing period. Interest shall accrue on the unpaid balance at the end of the thirty-(30) day period at the rate provided for in Section 600.6013 of the Michigan Compiled Laws, being the Revised Judicature Act of 1961, Act No. 236 of the Public Acts of 1961.

9.3 KEMC may request reasonable documentation kept by the State in its normal course of business and as may be available to the MDEQ. Provision of these documents by the MDEQ may result in the MDEQ incurring additional Oversight Costs which will be included in the next invoice. In any challenge by KEMC to an invoice for reimbursement of costs by the

MDEQ, KEMC shall have the burden of establishing that the costs were not lawfully incurred, in accordance with 20126a(1)(a) of the NREPA and this Agreement.

9.4 Costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA.

## **X. SAMPLING AND ANALYSIS**

10.1 All sampling and analysis conducted to implement this Order shall follow the methodologies prescribed in the Part 201 Rules and legally binding guidance provided by the MDEQ on sampling locations, parameters, detection limits and analytical methods.

10.2 KEMC shall provide the MDEQ with the results of all environmental sampling and other data generated by KEMC or by its consultant(s) in the performance or monitoring of any requirement under this Agreement. Such information shall be provided in accordance with Paragraph 8.1.

10.3 KEMC shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory utilized by KEMC in implementing this Agreement for quality assurance monitoring.

## **XI. ACCESS TO PROPERTY**

11.1 For the purposes listed in Section 20117(3)(a) - (e) of NREPA and for the purpose of monitoring compliance with this Agreement, the MDEQ, and its authorized employees, agents, representatives, contractors and consultants shall have an irrevocable right of access to the Property and to the remainder of the Facility to the extent it is owned, controlled by, or

available to KEMC.

11.2 The access authorized by this Section shall be subject to the following conditions and understandings:

- (a) Reasonable notice shall be provided to KEMC.
- (b) Upon request, any party granted access pursuant to this Agreement shall provide proper identification to the person in charge of the Property.
- (c) Access granted pursuant to this Agreement shall be during reasonable times.
- (d) All parties granted access pursuant to this Agreement shall comply with all applicable health and safety laws and regulations and the Rio Tinto guidelines that are available on site for such activities.
- (e) Access granted pursuant to this Agreement shall be limited to those areas of the Property and the remainder of the Facility owned, controlled by, or available to KEMC where access is reasonably required to conduct the activities outlined in Section VIII (Implementation of Response Activities), including verification of any data or information submitted to the MDEQ.
- (f) Any party granted access pursuant to this Agreement shall coordinate its activities with KEMC and shall make all reasonable efforts to prevent interference with KEMC's operation or activities.
- (g) Notwithstanding Paragraphs 11.2(e) and (f), parties granted access pursuant to this section shall not be required to take any action that would result in incurring any material cost increases in performing response activities. In addition, KEMC shall not interfere with the MDEQ or its contractors acting in compliance with these conditions and understandings.

11.3 KEMC shall reserve for the MDEQ and its authorized employees, agents, representatives, contractors and consultants the access provided under this Agreement in any lease, purchase, contract or other agreement entered into by KEMC which transfers to another party a right of control over the Property or a portion of the Property.

## **XII. RECORD RETENTION/ACCESS TO INFORMATION**

12.1 Except as provided in Paragraph 21.4 of this Agreement, KEMC and its representatives, consultants, and contractors shall preserve and retain, during the pendency of this Agreement and for a period of ten (10) years following the MDEQ issuance of a Certificate of Termination, all records, sampling or test results, charts and other documents relating to releases of hazardous substances, hazardous substance disposal, treatment or handling activities, and response activities, including, but not limited to, demolition conducted at the Facility, or that are maintained or generated pursuant to any requirement of this Agreement.

12.2 KEMC shall, upon request, provide to the MDEQ copies of all documents and information within its possession, or within the possession or control of its employees, contractors, agents, or representatives relating to the implementation of response activities at the Facility or to the implementation of this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the response activity(ies). KEMC shall also, upon request, make available to the MDEQ, upon reasonable notice, KEMC's employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of the response activity(ies).

12.3 If KEMC submits documents or information to the MDEQ that KEMC believes are entitled to protection as provided for in Section 20117(10) of the NREPA, KEMC may designate in that submission the documents or information which it believes are entitled to such protection. If no such designation accompanies the information when it is submitted to the MDEQ, the MDEQ may provide the information to the public without further notice to KEMC. Information described in Section 20117(11)(a)-(h) of the NREPA shall not be claimed as confidential or privileged by KEMC. Information or data generated under this Agreement shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of the NREPA, MCL 324.14801 *et seq.*

### **XIII. ASSIGNMENT**

Following the issuance of the Certificate of Termination to KEMC pursuant to Paragraph 21.2, the covenant not to sue provided to KEMC pursuant to this Agreement may be assigned to a subsequent owner of any or all of the Property at the reasonable discretion of the State provided that, at a minimum; (a) the subsequent owner is not liable under Section 20126(1)(a) or (b) of the NREPA; and (b) the assignment of the covenant not to sue would provide a benefit to the state that would not otherwise be realized. If the subsequent owner of any or all of the Property is an entity 100 percent owned or controlled by KEMC, and if the request for assignment occurs within five years of the Effective Date, the benefit provided to the State under this Agreement shall satisfy the benefit requirement of subparagraph (b) above.

#### **XIV. COVENANTS NOT TO SUE**

14.1 Subject to Section XV (Reservation of Rights) and in consideration of the response activities that KEMC performs pursuant to the MDEQ-approved work plan under Section VIII (Implementation of Response Activities) of this Agreement, the State hereby covenants not to sue or take any civil, judicial, or administrative action against KEMC for any claims arising from KEMC's ownership or operation at the Property for liability under Section 20126(1)(c) of the NREPA or Section 107a of CERCLA for releases of hazardous substances that occurred prior to the Effective Date of this Agreement. In the event that MDEQ alleges that KEMC causes or contributed to a release of hazardous substances after the Effective Date of this Agreement and MDEQ brings a cause of action under CERCLA, KEMC shall have the burden of proof set forth in 42 USC 9601(40)(A) to establish that all disposal of hazardous substances occurred prior to the Effective Date.

14.2 The covenant not to sue shall become effective upon the Effective Date.

14.3 The parties agree that it is their mutual intention that KEMC shall be afforded contribution protection for existing contamination pursuant to Section 20129(5) of the NREPA and Section 113(f)(2) of the CERCLA, 42 USC 9613(f), to the extent provided by law.

14.4 Subject to its reservation of rights in Paragraph 15.8, KEMC hereby covenants not to sue or take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives for any claims with respect to the Facility arising from:

(a) Any acts or omissions of the State or its authorized representatives acting within the scope of their authority under law and this Agreement related to environmental contamination at the Facility, except as authorized under Part 201 of the NREPA; or



(b) Off-site disposal, remediation, recycling or reclamation of hazardous substances associated with the Facility.

In addition, KEMC agrees that MDEQ shall have the right to specific performance of all the response activities described in the approved Work Plan, and further agrees not to take any civil, judicial, or administrative action to attempt to compel the State to undertake, implement, or complete any response activity at or related to the Facility under this Agreement.

## **XV. RESERVATION OF RIGHTS**

15.1 Except as provided in Paragraph 14.1 and in this Section XV, the covenant stated in Paragraph 14.1 shall apply to any liability for the Property that KEMC may have pursuant to Section 20126(1)(c) of the NREPA or CERCLA for releases of hazardous substances that occurred prior to the Effective Date of this Agreement. The State reserves the right to take independent judicial or administrative actions against KEMC for any of the following:

(a) To enforce the provisions of this Agreement, including specific performance of the response activities described in the approved Work Plan;

(b) Any releases of hazardous substances that occur after the Effective Date of this Agreement that KEMC is liable for under applicable law;

(c) KEMC's interference with or failure to cooperate with the MDEQ or its representatives, contractors, or agents as set forth in this Agreement;

(d) For property, and any facility attributable to such property, that is owned or operated by KEMC currently or in the future that is not defined in Paragraph 4.14 of this Agreement and for which KEMC has liability under state and federal law including, but not limited to, Part 201 of the NREPA;

(e) Reimbursement of state costs incurred to undertake response activities necessary to protect the public health, safety, or welfare or the environment at the Facility for which KEMC has liability under the NREPA or CERCLA; and

(f) Any other violations of law or permits applicable to KEMC's operations on the Property.

15.2 The parties agree that nothing in this Agreement shall be construed as a statement, representation, finding, or warranty by the State that the Property is fit for any particular use or that the response activities performed in accordance herein will result in the achievement of the remedial criteria established by law.

15.3 Nothing in this Agreement shall in any way limit the power and authority of the State to take appropriate action to: (a) protect public health, safety, or welfare or the environment; or (b) prevent, abate, or minimize a release or threatened release associated with the Facility.

15.4 Nothing in this Agreement shall in any way limit or affect the State's right to take judicial or administrative action against any other person(s) who may be liable under Section 20126 of the NREPA. Furthermore, this Agreement shall not be construed as discharging the liability of any other person or entity.

15.5 Nothing in this Agreement shall affect the duties and obligations that KEMC may have with respect to permits or other governmental approval or waive KEMC's duties and obligations under applicable federal or State law.

15.6 Nothing herein shall be construed as a waiver or modification of Sections 20137(6) and 20137(7) of the NREPA.

15.7 Notwithstanding any other provision of this Agreement, the MDEQ and the Attorney General shall retain all of their information gathering, inspection, access, and enforcement authorities and rights under Part 201 of the NREPA and any other applicable statutes or regulations.

15.8 Nothing in this Agreement shall bar KEMC from asserting applicable counterclaims, cross claims, or any defenses in conjunction with a lawsuit or other administrative action initiated by the MDEQ.

#### **XVI. INDEMNIFICATION/INSURANCE**

16.1 This Agreement shall not be construed as an indemnity by the State for the benefit of KEMC or any other party.

16.2 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract entered into by KEMC or on behalf of KEMC in carrying out actions pursuant to this Agreement. Neither KEMC nor any contractor shall be considered an agent of the State.

16.3 Subject to Paragraph 15.8 above, KEMC waives any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement, or arrangement

between KEMC and any other person for performance of response activities at the Facility, including claims on account of construction delays; provided such activities are within the scope of authority at law and under this Agreement.

16.4 Prior to commencing any response activities on or near the Property, KEMC shall secure, and maintain until issuance of the Certificate of Termination pursuant to Section XXI (Termination) of this Agreement, comprehensive general liability insurance with limits of one million dollars (\$1,000,000.00), combined single limit, naming the MDEQ, the Attorney General, and the State of Michigan as additional insured parties. If KEMC demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, KEMC needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the method used to insure, KEMC shall provide the MDEQ and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's, and the State of Michigan's status as additional insured parties. In addition, until the issuance of the Certificate of Termination pursuant to this Agreement, KEMC shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activity on behalf of KEMC in furtherance of this Agreement. Prior to commencement of the work under this Agreement, KEMC shall provide to the MDEQ satisfactory proof of such insurance.

## **XVIII. DISPUTE RESOLUTION**

17.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising between the parties under this Agreement, except for Section XIII (Assignment) which shall not be subject to Dispute Resolution. All disputes under this Agreement shall initially be subject to informal dispute resolution as follows:

(a) KEMC shall notify the MDEQ Project Coordinator, in writing, of KEMC's objection to an MDEQ decision concerning a requirement of this Agreement within ten (10) days of receipt of the notice of that decision.

(b) The MDEQ and KEMC shall have ten (10) days from the receipt by the MDEQ of the notification of objection to resolve the dispute.

(c) If resolution cannot be reached on any matter within this ten (10) day period, the MDEQ shall provide a written statement of its decision to KEMC. In the absence of initiation of formal dispute resolution by KEMC under Paragraph 17.2, the MDEQ position shall be binding on the parties.

17.2 Subject to Paragraph 17.1, if KEMC seeks to formally challenge any decision or determination under this Agreement the dispute resolution process shall be as follows:

(a) KEMC shall, within ten (10) days from receipt of the MDEQ position issued in accordance with Paragraph 17.1(c), provide to the MDAG and MDEQ Project Coordinator a statement of its position including: the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis or opinion that supports KEMC's position; and all supporting documents on which KEMC relies.

(b) The MDEQ Project Coordinator shall within ten (10) days after receiving the written request for review provide a written reply to KEMC and the MDAG stating its

understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation on which the MDEQ relies.

(c) The State shall, within ten (10) days after receiving the written statement of positions of the KEMC and the MDEQ Project Coordinator, provide the State's written statement of its position to KEMC and the MDEQ Project Coordinator.

(d) KEMC may file an action for resolution of the dispute in a court of competent jurisdiction within twenty (20) days after receipt of the State's position. The action for resolution of the dispute shall be limited to those disputed issues expressly raised in KEMC's and the MDEQ's statements of position.

17.3 Invoking dispute resolution shall not of itself extend or postpone any obligation of KEMC under this Agreement.

17.4 Notwithstanding this Section XVII (Dispute Resolution), in the event that any dispute arises between the State and KEMC, the burden of proof in such a dispute shall be borne by the parties in accordance with the NREPA and the administrative rules promulgated thereunder, except for any disputes that arise under Section XIV (Covenant Not to Sue). Any disputes concerning CERCLA arising under Section XIV shall be in accordance with Section XIV (Covenant Not to Sue).

### **XVIII. PROJECT COORDINATORS AND COMMUNICATIONS**

18.1 Each party shall designate a Project Coordinator. The MDEQ's Project Coordinator is Steve Harrington. KEMC's Project Coordinator is Kristen Mariuzza. Whenever a notice is required to be given or a communication, report, sampling data, analysis of data, or

other technical document is required to be forwarded by one party to the other party under this Agreement, such communication shall be directed to the parties at the below listed addresses and shall reference this Agreement. If any party changes its designated Project Coordinator, the name, address, and telephone number of the successor shall be provided to the other party, in writing, as soon as practicable.

As to MDEQ:

A. For Record Retention:

(Via Mail)

Chief  
Compliance and Enforcement Section  
Remediation Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, MI 48909-7926  
Telephone: 517-373-7508  
Fax: 517-373-2637

(Via Courier)

Chief  
Compliance and Enforcement Section  
Remediation Division  
Michigan Department of Environmental Quality  
Constitution Hall, South Tower, 4<sup>th</sup> Floor  
525 W. Allegan Street  
Lansing, MI 48913

B. For all payments pertaining to this Agreement:

(Via Mail)

Revenue Control Unit  
Michigan Department of Environmental Quality  
P.O. Box 30657  
Lansing, MI 48909-8157

(Via Courier)

Revenue Control Unit  
Michigan Department of Environmental Quality  
Constitution Hall, South Tower, 5<sup>th</sup> Floor  
525 W. Allegan Street  
Lansing, MI 48913

C. For all other matters pertaining to this Agreement:

Steve Harrington, Project Coordinator  
Remediation Division  
Upper Peninsula District Office  
Michigan Department of Environmental Quality  
K.I. Sawyer International Airport and Business Center  
420 5th Street  
Gwinn, MI 49841  
Telephone: (906) 346-8507  
Fax: (906) 346-4480

As to KEMC:

D. For all matters pertaining to this Agreement:

Ms. Kristen Mariuzza  
Kennecott Eagle Minerals Company  
504 Spruce Street  
Ishpeming, Michigan  
Phone No.: (906) 486-1257 (ext. 229)  
E-Mail: Kristen.Mariuzza@riotinto.com

18.2 KEMC's Project Coordinator shall have primary responsibility for overseeing the implementation of the response activities and other requirements specified in this Agreement.

18.3 In addition to its Project Coordinator, the MDEQ may designate other MDEQ employees or other authorized representatives, employees, and consultants to observe and



monitor the progress of any activity undertaken pursuant to this Agreement. In such event, the names of those MDEQ authorized representatives shall be provided to KEMC.

### **XIX. MODIFICATIONS**

This Agreement may only be modified according to the terms of this Section. The procedure for modifying this Agreement shall be as follows:

- (a) Modification of any Submission or attachments to Submissions required under this Agreement is upon written agreement of KEMC's and the MDEQ's Project Coordinators.
- (b) Modification of any other provision of this Agreement is upon written agreement between KEMC, the MDEQ, and the MDAG.

### **XX. SEVERABILITY**

The provisions of this Agreement shall be severable, and if any provision is declared by a court of competent jurisdiction to be inconsistent with federal or State law, and therefore unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

### **XXI. TERMINATION**

21.1 When the response activities required by Section VIII (Implementation of Response Activities) of this Agreement have been completed, KEMC shall submit to the MDEQ Project Coordinator a Certification of Completion and draft final report demonstrating that the response activities conducted pursuant to Section VIII (Implementation of Response Activities) were completed according to the MDEQ-approved work plan. Such Certification of Completion shall be signed by KEMC's Project Coordinator.

21.2 Upon receipt of the Certification of Completion and draft final report, the MDEQ will review the draft final report, any supporting documentation and the actual response activities performed in accordance with this Agreement. Within one hundred twenty (120) days of receipt of the Certification of Completion and draft final report, the MDEQ will determine whether KEMC has satisfactorily completed the requirements of this Agreement, including; but not limited to, completing the response activities and reimbursing Oversight Costs according to the terms of the Agreement. If the MDEQ determines that all the requirements of this Agreement have been satisfied, the MDEQ shall notify KEMC in writing and KEMC shall submit a "final" final report. MDEQ in, shall issue a Certificate of Termination after receipt of the "final" final Report. If MDEQ determines that KEMC has not satisfactorily completed all the requirements of this Agreement, it will notify KEMC of the deficiencies in writing. Upon receipt of a disapproval, KEMC shall correct the deficiencies in the draft final report and resubmit it for RD review and approval within thirty (30) days after receiving the RD disapproval. If upon resubmission the Submission is not approved, the RD shall so advise KEMC. Upon receipt of a disapproval of a resubmission, KEMC shall seek resolution of the deficiencies pursuant to Section XVII (Dispute Resolution) of this Agreement.

21.3 Only after KEMC has submitted the certification required in Paragraph 21.1 and the RD Chief has signed a Certificate of Termination verifying that KEMC's obligations pursuant to Section VIII (Implementation of Response Activities) of this Agreement have been completed shall the following components of the Agreement terminate: Section VIII (Implementation of Response Activities) and Section XVI (Indemnification/Insurance).

21.4 If KEMC notifies the MDEQ by certified mail that it no longer has status as an owner or operator of the Property and provided KEMC has previously been issued a Certificate of Termination by the MDEQ, KEMC and its successors shall obtain MDEQ's written permission prior to the destruction of documents required to be maintained pursuant to Section XII (Records Retention/Access to Information) of this Agreement. Upon request, KEMC shall relinquish custody of all such documents to the MDEQ. KEMC's request shall be accompanied by a copy of this Agreement and sent to the address specified in Section XX (Project Coordinators and Communications) or to such other address as may subsequently be designated in writing by the MDEQ.

## **XXII. FORCE MAJEURE**

22.1 KEMC shall perform the requirements of this Agreement within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a Force Majeure shall not be deemed a violation of this Agreement in accordance with this section.

22.2 For the purposes of this Agreement, a "Force Majeure" event is defined as any event arising from causes beyond the control of and without the fault of KEMC, of any person controlled by KEMC, or of KEMC's contractors, that delays or prevents the performance of any obligation under this Agreement despite KEMC's "best efforts to fulfill the obligation." The requirement that KEMC exercises "best efforts to fulfill the obligation" includes KEMC using best efforts to anticipate any potential Force Majeure event and to address the effects of any potential Force Majeure event during and after the occurrence of the event, such that KEMC minimizes any delays in the performance of any obligation under this Agreement to the greatest

extent possible. Force Majeure includes an occurrence of nonoccurrence arising from causes beyond the control of and without the fault of KEMC, such as an act of God, untimely review of permit applications or submission by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by diligence of KEMC and that delay the performance of an obligation under this Agreement. Force Majeure does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of KEMC.

22.3 KEMC shall notify the MDEQ by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Agreement. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay, the cause or causes of delay, the measures taken by KEMC to prevent or minimize the delay, and the timetable by which those measures shall be implemented. KEMC shall use its best efforts to avoid or minimize any such delay.

22.4 Failure of KEMC to comply with the notice requirements of Paragraph 22.3 above, shall render this Section XXII void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 22.3.

22.5 If the parties agree that the delay or anticipated delay was beyond the control of KEMC, this may be so stipulated and the parties to this Agreement may agree upon an appropriate modification of this Agreement. If the parties to this Agreement are unable to reach such agreement, the dispute shall be resolved in accordance with Section XVII (Dispute

Resolution) of this Agreement. The burden of proving that any delay was beyond the control of KEMC, and that all the requirements of this section have been met by KEMC, is on KEMC.

22.6 An extension of one compliance date based upon a particular incident does not necessarily mean that KEMC qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

### **XXIII. SEPARATE DOCUMENTS**

This Agreement will be executed in two (2) duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### **XXIV. SIGNATORIES**

Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Agreement and to legally bind such party to the terms and conditions of this Agreement.

THE STATE AND KEMC AGREE TO ALL TERMS AND CONDITIONS HERETOFORE SET FORTH. MDEQ Reference No.: CNTS-RD-2010-001

IT IS SO STIPULATED:

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

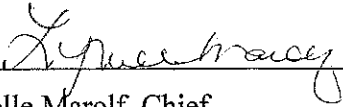
By Kathleen L. Cavanaugh

Kathleen L. Cavanaugh (38006)  
Assistant Attorney General  
Environment, Natural Resources and Agriculture Division  
Department of Attorney General

5-6-11

Date

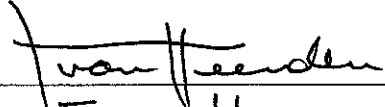
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

By:   
Lynelle Marolf, Chief  
Remediation Division  
Department of Environmental Quality

5/06/11  
Date

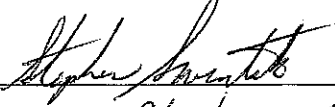
IT IS SO STIPULATED:

KENNECOTT EAGLE MINERALS COMPANY

By:   
Name: EVAN HEERDEN  
Title: PROJECT DIRECTOR

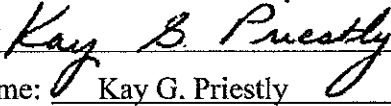
5-4-11  
Date

KENNECOTT EAGLE LAND COMPANY

By:   
Name: Stephen Swartz  
Title: CFO

5-4-11  
Date

RIO TINTO AMERICA INC.

By:   
Name: Kay G. Priestly  
Title: Vice President

May 3, 2011  
Date